UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/1995/SR.5
8 February 1995

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 5th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 1 February 1995, at 3 p.m.

Chairman: Mr. HITAM (Malaysia)

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GE.95-10528 (E)

The meeting was called to order at 3.10 p.m.

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION (item 9 of the provisional agenda) (continued) (E/CN.4/1995/28 and 29)

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE (item 4 of the provisional agenda) (continued) (E/CN.4/1995/3, E/CN.4/1995/8-E/CN.4/Sub.2/1994/43, E/CN.4/1995/13, 14 and 19-22)

1. Mr. BERNALES BALLESTEROS (Special Rapporteur), introducing his report on the question of the use of mercenaries (E/CN.4/1995/29), said that, although the conflict in Angola had formally ended, several others had broken out, with some evidence of the participation of mercenaries. There was undoubtedly an international market in mercenaries, with all its attendant devices to conceal the nature of their activities and to make them appear nationals of the countries in whose conflicts they were involved. A mercenary had, of course, to be a foreigner.

2. Paragraphs 29-37 of the report contained information which would help to formulate policies to prevent and combat mercenary activities. In that connection, he noted that legal loopholes existed in some countries whereby the act of advertising for and hiring mercenaries was not in itself illegal. The recruitment of persons for unspecified services, which could be damaging to a territory other than the one in which the contract was made, should be carefully investigated and monitored. Possible solutions would be to cancel the operating licences and permits of entities that had hired mercenaries, to refuse passports and visas to mercenaries and to prohibit them from passing through the territory of other States.

3. For the most part, mercenaries had previously belonged to the regular armed forces of a country. It would be helpful, therefore, if States could agree on a policy of prevention, exchange of information and follow-up for such people to detect any tendency to antisocial behaviour. Moreover, since other illicit activities such as drug trafficking, trafficking in people and arms, smuggling or terrorism, were related to the recruitment of mercenaries, States should act to prevent bands of mercenaries from being formed within their territory and to criminalize mercenarism.

4. Cooperation between States to prevent the activities of mercenaries was complicated by issues of definition. For example, the status of a foreigner who entered a country and acquired its nationality to conceal the fact that he was a mercenary and acted for a third State or the other side in a domestic armed conflict should be determined. Questions could also be asked about the use by mercenaries of dual nationality and about the limits of jus sanguinis, when persons fought in an armed conflict taking place in the country of their forebears. A meeting of experts should be organized, in line with the recommendation in General Assembly resolution 48/92, which could serve as a basis for updating the international instruments on the subject.

5. With regard to mercenary activities in Africa, he said that the cessation or approaching cessation of armed conflicts in a number of countries gave rise to hopes for a new era of political stability, peace and development there. Mercenaries had, however, been active in other African countries, such

as Rwanda, Burundi, Somalia and Sudan; and their presence inevitably led to an incalculable rise in criminal activity. They had left a terrible legacy in some countries, such as Angola. Moreover, there were still some violent minority groups in South Africa, which had not disbanded, disarmed or dismissed the mercenaries working for them.

6. Paragraphs 53-88 of his report concerned his visits to the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro). The visit to Croatia had been made with the aim of verifying allegations concerning the presence of mercenaries in the forces of that country and other allegations, made by the Croatian authorities, concerning mercenaries present in their territory but acting against the Croatian State. All those in positions of authority who had been interviewed denied that the Government had been involved, directly or indirectly, in hiring mercenaries and said that the provisions adopted in September 1992 regularizing the organization and functioning of armed forces were being applied. The Minister of Foreign Affairs and Deputy Prime Minister of Croatia had reiterated that the number of volunteers - mainly of Croatian descent - that had joined the Croatian forces in 1991 had been extremely small and militarily insignificant, although they had provided important moral support, and had stated that Croatia had never hired mercenaries. Any suggestion to the contrary was Serbian propaganda, designed to distract attention from the fact that the Serbian forces in the occupied areas of Croatia contained mercenaries.

7. He had also held wide-ranging conversations during his visit to the Federal Republic of Yugoslavia (Serbia and Montenegro). The main aim of the visit had been to obtain further details about and to verify on the spot the allegations made by the Government concerning the participation of mercenaries in the conflicts that had occurred first in Croatia and subsequently in Bosnia and Herzegovina. According to Yugoslav authorities, mercenaries from various Western countries had fought on the Croatian side; some had followed the conflict when it moved to Bosnia and Herzegovina and had been joined by others from Islamic countries. The Federal Minister for Foreign Affairs had rejected charges that his country was involved in using mercenaries.

8. The documentation he had received from the authorities of both Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) was insufficient. He needed more conclusive evidence to support the allegations of mercenary activity that had ben made. His visits had, however, enabled him to make some preliminary appreciations of the situation in the former Yugoslavia. They appeared in paragraph 87, which he urged representatives to read carefully, together with the conclusions contained in paragraphs 100-102 and the recommendations in paragraphs 114 and 115.

9. Mr. ZHANG Yishan (China) said that his delegation was very pleased to see the significant progress that had been made in the Middle East peace process. The concerted efforts of both sides had led to the attainment of self-rule for the Palestinians in the Gaza Strip and Jericho. He also welcomed the rapprochement between Jordan and Israel and between Syria and Israel. The progress that had been made was attributable to both the persistent struggle of the Palestinian and other Arab peoples and the wise choice of the leaders of Palestine, of other Arab countries and of Israel to resolve their differences by peaceful means.

10. That was an important step towards the complete restoration of the legitimate national rights of the Palestinian people and thus to a comprehensive and long-lasting peace in the Middle East. It should not be forgotten, however, that the Palestinian people had not yet fully realized its civil, political, economic, social and cultural rights, especially the right to self-determination. Incidents of violence were still occurring. His delegation urged the parties concerned to exercise restraint and to continue to resolve their differences through peaceful means.

11. The international community, including the Commission, had played an important role in supporting the restoration of the legitimate rights of the Palestinian people and promoting a peaceful solution to the Middle East question. The resolutions adopted by the Commission had always provided strong encouragement and support for the just struggle of the Palestinians and the people of the other occupied Arab territories. The Commission should therefore continue to give high priority to considering and offering solutions to the question of the gross violation of human rights caused by colonialism, racism, alien aggression, occupation and foreign domination.

12. His Government had constantly supported the Palestinians and the people of the other occupied Arab territories in their struggle, had participated in five multilateral working groups on the Middle East peace talks and had hosted the meeting of the Working Group on Water Resources. It would continue to support all moves towards the complete and fair resolution of the Middle East question.

13. Mr. BARKER (Australia) said that his Government fully supported the peace process in the Middle East and called on all parties to adopt moderate and flexible positions. It would be tragic if continuing distrust and violence jeopardized the transfer of authority in the occupied territories. During the period ahead, respect for human rights on the part of all concerned would be crucial to the establishment of a climate of greater trust and tolerance.

14. His Government was concerned at the continuing violence between Israelis and Palestinians and the killing and wounding of Palestinians by other Palestinians. While Israel did have legitimate security concerns, that did not justify actions which violated international law and internationally accepted standards of human rights. Israel must accept the de jure applicability to the occupied territories of the Geneva Convention relative to the Protection of Civilian Persons in Time of War - Fourth Geneva Convention - and refrain from measures that were in violation of that Convention. His Government was concerned at Israel's continued construction of settlements in the occupied territories and demolition of Palestinian houses and at the violence against Palestinians used by Israeli forces.

15. It was also concerned at the killing and wounding of members of the Israeli defence forces and of Israeli civilians by Palestinians violently opposed to the peace process, and the killing and torture of alleged Palestinian collaborators by other Palestinians. It urged the Palestine Liberation Organization (PLO) and the Palestinian Authority to respect the internationally accepted human rights standards.

16. His Government's policy was based on two premises: a total commitment to Israel's right to exist within secure and recognized boundaries; and recognition of the right to self-determination of the Palestinian people,

including its right to choose independence and establish an independent State. It supported a comprehensive solution to the Middle East dispute based on Security Council resolutions 242 (1967) and 338 (1973) which called for Israel's withdrawal from territories occupied during the 1967 war, and respect for and acknowledgement of the sovereignty of every State in the region and their right to live in peace within secure boundaries.

17. Turning to agenda item 9, he recalled that the principle of equal rights and self-determination had been properly used during the period of decolonization to justify the granting of independence to colonized territories. Opinion differed as to whether the right of self-determination continued to exist once independence from colonial domination had been attained. In his delegation's view, however, self-determination was a comprehensive human rights concept, the implementation of which was particularly important in an uncertain and transitional world situation. It should include not only external self-determination but internal self-determination, namely, the continuing right of peoples to decide how they should be governed, the right of individuals to participate fully in the political process and the right of distinct peoples within a State to make decisions on and administer their own affairs.

18. Nevertheless, as set forth in the Declaration on Principles of International Law on Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, the right of self-determination could not normally embrace the right of secession by peoples from independent States and be used to justify the splintering of multi-ethnic States into smaller and smaller units, or campaigns by minority peoples to secede from sovereign and independent States.

19. Violent intra-State conflict had recently begun to pose a major problem for international security and such conflicts were unlikely to decrease. The international community had thus to develop a comprehensive and constructive interpretation of the concept of self-determination. The great majority of the world's States were ethnically diverse and sovereign independence for every self-defined group was not feasible. The ideal of an ethnically pure State was not only unrealistic: it did not correspond to the general will of the international community.

20. Attempts to pursue such exclusive political arrangements had led only to bloodshed in various parts of the world. Governments had to find ways of accommodating the demands of peoples for internal self-determination, expressed as a need to maintain their cultural identity, language and beliefs. His own Government was taking action in that respect through policies of multiculturism and self-management for indigenous peoples and conscious efforts to ensure respect for economic, social and cultural rights.

21. The right of self-determination could not be set above the other fundamental rights and must not be used to justify abuses of those rights.

22. It was the responsibility of Governments and of the United Nations to resolve the current security problems at both the national and the individual level. Measures aimed at conflict resolution and conflict prevention should emphasize the aspect of human rights, including the right of peoples to self-determination and economic, social and cultural rights.

23. Mr. LAMDAN (Observer for Israel) said that the new battle being waged in the Middle East was a battle for peace the goal of which was to establish a climate of tolerance, pluralism, religious freedom and respect for human rights. It was a battle in which everyone, including the Commission on Human Rights, had to take sides.

24. The peace process was not confined to agreements between Israel and the Palestinians; it was also setting in motion important changes at the regional level. Concrete achievements included the establishment of peace between Jordan and Israel and of full diplomatic relations between Morocco and Israel; and a halt to aspects of the Arab boycott against Israel. In addition, five working groups had been set up to deal with issues affecting the region, such as economic development, refugees, and the environment. In that connection, representatives of Governments and international institutions had met recently to discuss the establishment of a regional development bank for the Middle East.

25. There had also been progress, despite many difficulties, between Israel and the Palestinians. The Cairo Agreement concerning the Gaza Strip and Jericho had been signed in May 1994 and its implementation had begun immediately; further negotiations had led to the signing in August 1994 of an "early empowerment agreement", paving the way for the transfer to the Palestinian Authority of powers and responsibilities in five essential spheres; and negotiations were currently under way to implement the second phase of the Declaration of Principles on Interim Self-Government Arrangements, which would confer an interim status and autonomy on the rest of the West Bank.

26. Compounding the difficulties inherent in the peace process, extremist and terrorist groups, often under the false guise of religion, were striving to destroy the process through a campaign of terror against Israelis and non-Israelis alike. Attacks had been carried out in Israel and abroad. Since the Oslo agreement, 112 Israelis had been killed in acts of terror. Nevertheless, despite the extreme difficulties connected with the peace process, his Government was fully committed to it.

27. Most of the terrorists, even if some were directed from abroad, lived in the territories administered by Israel or in the self-governing Palestinian areas of Jericho and Gaza. That posed difficulties for both the Israeli Government and the Palestinian Authority. Israel was striving to reconcile two basic obligations: to protect the lives of its citizens and to respect the rights of the Palestinians, among whom the terrorists were living. Israel was an open, democratic society, based on the rule of law, which promoted and protected human rights. Its every act was scrutinized and reported in the world press. Any irregularities were investigated.

28. After the withdrawal of Israeli forces from Jericho and the Gaza Strip, the Palestinian Authority had failed to fulfil its pledge to maintain security and public order. Not a single terrorist had been tried. It was time for the Palestinian Authority to take action: terrorists could not be allowed to operate with impunity. The Palestinians must live up to the same standards they demanded from others; they must open up their prisons and accept scrutiny of their methods of investigation.

29. The Palestinians must also demonstrate that they were in earnest about human rights by taking action at all levels, including the establishment of groups and institutions for the advancement of civil, economic and social rights.

30. The Commission on Human Rights had an important role to play in the peace process. It could put itself firmly on the side of peace by adopting once again, and perhaps strengthening, the resolution it had adopted in 1994 in support of the peace process (resolution 1994/4). It must bear in mind the positive changes that had taken place in the Middle East and find ways to use those gains to strengthen the respect for human rights throughout the region. It should eliminate its one-sided and discriminatory agenda item 4 and put an end to its own discrimination against Israel, which had been kept out of any regional grouping and was thus effectively barred from full membership of the Commission itself.

31. The Commission should follow the example of other United Nations bodies and discard the old, politically-motivated resolutions that it had for years been adopting ritualistically in relation to the rights to development and self-determination. It should follow the recommendation by the Special Rapporteur himself, as contained in his report (E/CN.4/1995/19), to eliminate altogether the post of Special Rapporteur on the occupied territories.

32. In assisting the peace process, the Commission must bear in mind how fragile the process was and must exercise prudence, moderation and objectivity. It might begin by encouraging the development of human rights institutions in the self-governing territories.

33. Mr. DEGUENE KA (Observer for Senegal) said that, after the signing of the Declaration of Principles in September 1993, the successive agreements between Israel and the PLO, and the peace accord between Israel and Jordan, it had been reasonable to expect a peaceful and rapid resolution of the Palestinian question and, more generally, the establishment of a new harmony in the Middle East. Unfortunately, a number of tragic events in recent months had hindered the peace process, despite the fact that the parties involved had continued their valiant efforts to achieve a negotiated settlement.

34. Despite the numerous obstacles, the international community must work to encourage and consolidate the peace process. One important element in that regard was the promotion of and respect for the human rights of all the peoples in the region. In that connection, he welcomed the appointment by the Secretary-General of the United Nations Special Coordinator in the Occupied Territories and the inter-agency meeting held in 1994 to adopt an integrated approach to economic and social development in the Middle East. To strengthen the Palestinian Authority and to ensure that the residents of the autonomous areas received the resources they needed, the pledges made by donors in 1993 must be transformed into actual financing of the projects planned.

35. His delegation wished to pay tribute to the effective action of the specialized agencies, international organizations and non-governmental organizations that were assisting the populations in the occupied territories. As the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People and as a member of the Special Committee to Investigate

Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, his delegation was in a position to appreciate the contributions of those organizations and agencies.

36. To make the peace process truly credible, it was essential to improve the human rights situation in the occupied territories. The issue of the settlements must be resolved and the settlers themselves had to change their behaviour towards the Arab and Palestinian populations. Acts of terrorism and intimidation, on both sides, should be discouraged and punished; prisoners should receive better treatment; freedom of religion must be respected; and the confiscation of houses and land must be stopped. If such measures were not taken, the inhabitants of the occupied territories might become disenchanted and turn to violence.

37. It was generally agreed that the question of Palestine was at the heart of the Israeli/Arab conflict. Everyone should combine to support the courageous and determined efforts of the Palestinian leadership to achieve genuine peace in the Middle East. Both the parties involved were striving to make the peace process irreversible, thus proving that it was no longer an impossible dream. In that connection, he welcomed the forthcoming summit of Jordan, the PLO, Egypt and Israel, which was to be held in early February 1995.

38. Mr. PETZCH (Observer for South Africa), replying to the comments made by the Special Rapporteur on the question of the use of mercenaries and his report (E/CN.4/1995/29) said that the South African Government did not employ mercenaries and was strongly opposed to their use or recruitment in Africa. South African legislation effectively prohibited nationals of the country from serving as mercenaries and provided a legal basis for dealing with that phenomenon, but enforcement of the law was complicated by the fact that much of the criminal activity took place in foreign countries.

39. According to press reports, South African citizens were involved on both sides of the Angolan conflict but it was not yet clear whether all or any of them were mercenaries in the sense of South African law and current international standards. His Government was in close and continuous contact with the Angolan authorities on that issue and would take any action that circumstances might require, whether through the courts or otherwise.

40. Mr. AL MUSIBLI (Observer for Yemen) said that, during the 1960s, decolonization had enabled a number of countries to join the ranks of the international community. The most glaring exception to that trend, however, was the existence in the Middle East of an entity alien to the region which occupied the land of other people, tortured them and hindered their progress towards freedom, thus defying the will of the international community to end colonialism throughout the world.

41. Peace and stability could never be achieved in the Middle East without an end to the 28-year Israeli occupation of Arab lands, since oppressed peoples had the right to defend themselves against their oppressors. Despite the recent peace negotiations and agreements, the desire of the Palestinian people to achieve a just peace was clearly not reciprocated by Israel, whose aggression against the Palestinian people and Arabs resident in South Lebanon and the Golan were becoming ever more reckless in disregard for international law, as numerous reports by United Nations bodies and the international press

attested. Israel's assertions that it desired peace were not matched by its actions. It had even failed to abide by the provisions of the recent Declaration of Principles.

42. It was difficult, indeed, to reconcile Israel's professed desire for peace with its increasing repression, its confiscation of Palestinian land, its expansion of Jewish settlements, and its policies of collective punishment and ethnic cleansing. Those were in fact the methods by which the entity of Israel had been originally created and those were the methods it was using to survive. In that connection, his Government subscribed to the view that the human rights of the Palestinian people could not be dissociated from its right to the land and to its homeland.

43. To retain any credibility, the Commission, as the representative of the international community, must take a firm stand on the matter and call on Israel to comply with all relevant resolutions and international instruments, including the Fourth Geneva Convention, and to accelerate the withdrawal of its troops from the occupied territories.

44. Mr. KOTHARI (Habitat International Coalition) said that, since its occupation of East Jerusalem in 1967, Israel had ruled the area as if it were its sovereign territory. The 1967 census had revealed that 66,000 Palestinians and only a few hundred Jews were living in East Jerusalem whereas, in 1993, the Israeli Government had announced that a Jewish majority had been achieved in the area, with 155,000 officially registered Jewish residents as compared to 150,000 Palestinians. Discriminatory Israeli housing and planning policies had decreased the Palestinian population and increased the Israeli population of East Jerusalem to that extent.

45. The severe implications of those discriminatory policies for the housing and living conditions of the Palestinian residents of East Jerusalem had officially acknowledged in a report submitted by the Ministerial Committee for Jerusalem Affairs to the Mayor of Jerusalem which detailed the continuous neglect of the Arab sector and called for urgent improvements in the living conditions of the Arab residents of East Jerusalem. Although some excerpts had been published, the full report had been kept secret and was unavailable to the public. It was clear that the Government of Israel was making use of the provision of the Declaration of Principles which allowed a postponement of negotiations on the final status of Jerusalem in order to expand and consolidate its control over its so-called "undivided capital" and create a "Greater Jerusalem".

46. The drive to create a "Greater Jerusalem" was the primary reason for the plight of the Jahalin, a Bedouin tribe which had been residing on the edge of the Judaean Desert between Jerusalem and Jericho since 1950, approximately 800 members of which were currently threatened with forcible eviction. The only resettlement territory offered to the Jahalin tribe so far was beside the regional rubbish dump and had been declared unfit for human habitation by Israeli environmental and planning experts.

47. Policies such as the demolition of houses, land confiscation, the creation and development of exclusively Jewish settlements and the discriminatory treatment of Palestinians in matters relating to housing

services, all constituted gross violations of the numerous international instruments which Israel had ratified and which protected the right to an adequate standard of living, including the right to housing.

48. Another grave injustice to Palestinians residing in the occupied territories and in Gaza was the closure of Jerusalem which had been in effect since 30 March 1993. That closure denied patients and health-care workers access to medical facilities in East Jerusalem; prevented students and teachers from reaching academic institutions; denied Muslims and Christians the freedom to worship at their holy sites; denied Palestinian customers access to the commercial sector; and deprived Palestinians of the most basic of human rights, namely, freedom of movement.

49. His organization was also very concerned about the continued confiscation of land in the West Bank. Since 1967, the Israeli authorities had confiscated 73.6 per cent of the West Bank on security or military grounds and for the expansion of settlements. Between 13 September 1993 and 20 August 1994, they had confiscated 67,000 dunums of land. In its resolutions on the settlements question the Commission should point out not only that they were illegal under international law and according to the terms of the Declaration of Principles, but that they constituted a grave threat to the lives and livelihood of the Palestinians and were obstacles to peace and to the enjoyment of human rights by the entire population of the region.

50. Mr. HOWEN (Amnesty International) said that, despite the Declaration of Principles and the establishment of a Palestinian Authority in the Gaza Strip and Jericho in 1994, serious human rights violations and abuses continued to occur. His organization was concerned at the denial of the right to life and to the integrity of the human person by the Israeli Government, by the Palestinian Authority and by Palestinian opposition groups.

51. The use of torture by the Israeli security services appeared to be intensifying. Whereas in 1987, the Landau Commission had endorsed the use of "moderate physical pressure" in interrogating suspects, the Israeli Ministerial Committee which periodically reviewed the guidelines of the Landau Commission was said to have authorized in November 1994 the use of "increased" physical pressure. The Committee against Torture had considered Israel in March 1994 and had found the use of moderate physical pressure to be completely unacceptable. It had thus recommended that interrogation practices in breach of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should cease forthwith.

52. Palestinians continued to die in circumstances which suggested that they had been summarily executed by Israeli undercover units. Other Palestinians had died in circumstances where United Nations standards for the use of force and firearms appeared to have been disregarded. His organization called for an immediate end to all unlawful killings by Israeli forces.

53. Over 250 Palestinians were believed to be held by the Israeli Authorities in administrative detention without charge or trial. The Israeli Government should end the use of administrative detention and release all administrative detainees unless they were to be tried promptly and fairly.

54. Over 30 Lebanese nationals, some abducted from Lebanon, were held in administrative detention in Israel. Some had been tried and had completed

their sentences while others had never been tried. Over 250 detainees continued to be held incommunicado without charge or trial in the Khiam detention centre in an area of South Lebanon controlled by Israel and the South Lebanon Army. Many were believed to have been tortured during interrogation. The Israeli Government had failed to clarify the legal status of the Khiam detainees.

55. It was to be feared that some or all of the Lebanese nationals held in Israel and the Khiam detainees might be held as hostages in order to obtain the freedom of, or information about, four missing Israeli soldiers and several members of the South Lebanon Army (SLA). Whatever their status, all detainees, including the missing Israeli and SLA soldiers, should be protected from torture and ill-treatment and allowed access to family members and to the International Committee of the Red Cross. It was high time to end the suffering of all the victims and their families.

56. In the areas under the jurisdiction of the Palestinian Authority, detainees accused of having collaborated with the Israeli authorities and others suspected of criminal offences had been tortured or ill-treated, mainly through beatings. Hundreds of alleged members of Islamist groups such as Hamas and Islamic Jihad had been arrested since the establishment of the Palestinian Authority. None had been charged with any offence or brought before any judicial authority and, although most of them had been released after a few days, some had been held for weeks or months without access to lawyers.

57. The Palestinian Authority's security forces had also killed at least 15 people in circumstances suggesting unlawful killing, 13 of them outside the Palestine Mosque in Gaza City on 18 November 1994, in apparent disregard for United Nations standards on the use of force and firearms. The Palestinian Authority had announced the setting up of a judicial inquiry into the incident, but no public report had yet been issued. The Palestinian Authority should ensure that all its forces adhered strictly to international standards on the use of force, and bring to justice any person responsible for unlawful killings.

58. Palestinian opposition groups, such as Hamas and Islamic Jihad were increasingly committing gross human rights abuses, including hostage-taking and bomb attacks against civilians. At least 35 civilians had been killed in such attacks since April 1994. An immediate end must be put to such abuses.

59. His organization took no position on political conflicts or on the legitimacy of resorting to arms to pursue political goals. However, human rights violations and abuses were indefensible. No level of violence by one side, however serious, could ever justify breaches of international law by another side. All Governments, other political authorities and opposition groups should prevent such violations and abuses.

60. The peace process remained a fragile one and it was most important that the Special Rapporteur should continue to monitor the situation and make recommendations that would encourage respect for human rights by all parties. Such respect for human rights remained fundamental if a just outcome of the peace process was to be ensured.

61. Ms. NEWRY (Centre Europe - Tiers Monde), said that, in early January 1995, her organization had asked the Deputy Special Representative of the Secretary-General for the Western Sahara whether it could visit the area in which the forces of the United Nations Mission for the Referendum in Western Sahara (MINURSO) were deployed in order to assess the human rights situation there. It had as yet received no answer to that request. It had however, received a document from the former Vice-Chairman of the MINURSO Identification Commission, Mr. Ruddy of the United States, containing his statement to a Subcommittee of the United States House of Representatives on 25 January 1995 in connection with the latter's examination of United Nations peace-keeping operations and measures.

62. Mr. Ruddy, a United States diplomat, had spent most of 1994 in the Western Sahara in his capacity as Vice-Chairman of the Commission and had been removed from that office because of his outspoken criticism of the nature of the United Nations presence in the Western Sahara and of the way in which the referendum process was being organized. That process, which was to ensure self-determination for the Saharan people, was not a mere formal exercise. The United Nations had a duty to organize a fair and orderly referendum whose results would not be open to dispute.

63. The Saharans were the last remaining people in Africa who had been unable to exercise their right to self-determination. Morocco had invaded Western Sahara in 1975 and her organization had repeatedly documented its obstructionist tactics since the arrival of MINURSO in 1991 but, the testimony in question had seemed to fall on deaf ears. She therefore intended to quote at length from Mr. Ruddy's statement.

64. Experts on Moroccan policy had informed him that Morocco was opposed to the idea of a referendum because the risks were greater than the possible gains and the status quo was preferable. Since the initiation of the identification process on 29 August 1994 in the Western Sahara and southern Algeria, MINURSO had ceased to be a United Nations-run operation and had fallen under Moroccan control. On 27 August 1994, the chief of the MINURSO Mission in El Aaiun had complied with an order from the Moroccan liaison officer to remove the United Nations flags from the building where the identification process was to take place. In December 1994, Morocco had interrupted the process for over a week because of a minor editorial problem with a form proposed by MINURSO.

65. The crucial task of the registration of potential voters had been delegated by MINURSO to Morocco and to the Frente Popular para la liberación de Saguia el-Hamra y de Río de Oro (Frente POLISARIO), which were carrying out the operation in their own centres. According to Arab-speaking members of MINURSO, some Saharans had complained of such irregularities as the Moroccan authorities refusing them access to means of conveyance to the registration centre. Only Saharans selected by the Moroccans were authorized to enter a MINURSO identification centre or any other United Nations office. All others were turned away by the police. MINURSO had been officially informed of all such irregularities, but the information had never been passed on to United Nations Headquarters in New York.

66. Mr. Ruddy's charges called for clarification from the United Nations, which should intervene in order to ensure the fair and impartial conduct of the identification process and the referendum. Her organization trusted that

the members of the Commission would make representations to the Security Council, drawing its attention to Mr. Ruddy's statement and calling for appropriate changes to ensure that Saharans would vote in the referendum on self-determination only under the supervision of the United Nations and independent observers.

67. Mr. DIENG (International Commission of Jurists) said that the human rights situation in the occupied Arab territories continued to be of major concern. According to Al-Haqq, his organization's West Bank affiliate, 143 Palestinians had been killed by the Israeli military and settlers and 16 by the Palestinian police in 1994. According to the Israeli human rights group B'Tzelem, 46 Israeli civilians and 16 security personnel had been killed during the same period by Palestinian Islamist groups. Following every killing of an Israeli, harsh measures of collective reprisal were taken against Palestinians, in particular the sealing-off of the West Bank and restrictions on access to East Jerusalem. Palestinian day-workers were particularly hard hit by such measures. Israeli officials had spoken of plans to cut off and annex illegally even more occupied land around Jerusalem.

68. On 24 January 1995, Israeli newspapers had reported that the Israeli Ministerial Committee on the Israeli Security Service had extended the authorization to use force or unspecified techniques against detainees. Israel justified its action on the grounds that torture was necessary to prevent attacks on Israeli lives. But freedom from torture was a non-derogable right. Under the International Covenant on Civil and Political Rights, to which Israel was a party, States could not use torture even in a state of emergency. The argument of necessity was also contrary to the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Israel was also a party.

69. The settlement policy continued in the occupied territories in violation of the Fourth Geneva Convention. More land had been confiscated, trees uprooted and houses demolished.

70. A reminder of the legal framework for examining such violations was particularly necessary in the light of the surprising views expressed by the Special Rapporteur in his report on the human rights situation in the occupied Palestinian territories (E/CN.4/1995/19). According to the information received, the Special Rapporteur appeared to be giving more weight to officials and politicians than to human rights groups and victims. It was not surprising, therefore, that he described the situation in purely political terms and reached purely political conclusions. For example, he stated his belief that the peace process was the sine qua non for respect for human rights, although respect for human rights was not the outcome of any political process; it was through respect for legality that human rights were preserved.

71. Although the mandate of the Special Rapporteur made explicit reference to international law, especially the Fourth Geneva Convention, he consistently replaced the provisions of the Convention by his own political views. He referred to Israeli settlements, for example, as "an extremely delicate point" in the negotiation of relations between Israel and its Palestinian neighbours. But settlements were more than delicate: they were illegal under article 49 of the Fourth Geneva Convention.

72. In his conclusions, the Special Rapporteur stated that international public opinion was similar to Israeli public opinion in that it regarded security as taking precedence over human rights. But the Geneva conventions and other humanitarian law instruments, such as the Hague Regulations, struck a delicate balance between the security needs of an occupier and the rights of the occupied population. The Special Rapporteur did not even attempt to strike such a balance.

73. Under his mandate, the Special Rapporteur was required to report to the Commission "until the end of the Israeli occupation of those territories" but he had concluded his report by calling for the termination of his mandate. It was with great regret that the International Commission of Jurists had to agree that the Commission should disperse with his services. It believed, however, that the mandate of Special Rapporteur should be maintained.

74. Turning to item 9, he said that his organization regretted the fact that the Saharan people had not yet been able to exercise its right to self-determination. It was clear from the Secretary-General's recent report to the United Nations General Assembly (A/49/492) that numerous obstacles remained, particularly in the identification of voters. Impartial international supervision of the referendum was essential to prevent numbers from being manipulated in a political power game.

75. Mr. CUNNIAH (International Confederation of Free Trade Unions) said that, when Israel and the Palestine Liberation Organization had signed the Declaration of Principles in 1993, his organization had called on the international community to support what it saw as a delicate and fragile peace initiative. Since then there had been several attempts by extremist forces on both sides to undermine the peace process. His organization condemned all such attacks and reiterated its full support for the two parties in their efforts to secure lasting peace. It was leaving no stone unturned to promote sustained cooperation between the Histadrut, the General Federation of Labour in Israel, and the Palestinian General Federation of Trade Unions in the West Bank and Gaza in workers' education, training and the building of trade union structures.

76. The main problems in the West Bank and Gaza were unemployment, underemployment and poverty. The unemployment ratio was estimated at about 60 per cent. Decreasing employment opportunities for Palestinians in the Gulf States and in Israel - where the situation was compounded by frequent border closures - brought severe hardship to the Palestinian workers. Job creation through massive public and private investment would remain a high priority for a number of years. His organization and its affiliates were already implementing socio-economic projects in the West Bank and Gaza.

77. In the autonomous territories, the construction of decent houses, the provision of adequate health services, human-resource development and education and training for the younger generation were urgent priorities. The lack of any tangible improvement in living standards was the argument used by the extremists to undermine the peace process. As the Special Rapporteur had rightly pointed out in his report (E/CN.4/1995/19), unless the international donor community immediately made good its pledges of aid and assistance, the hopes raised would turn into disappointment tinged with anger and the attack-repression cycle would resume.

78. The technical assistance programmes recently established by ILO, UNESCO and UNDP were serious efforts to develop the capacity of the Palestinian people to meet the challenge of economic and social development. His organization therefore urged the Commission to take all appropriate measures to support the delicate transition from decades of conflict and occupation to an era of peace and prosperity.

79. Ms. GRAF (International League for the Rights and Liberation of Peoples) said that, since its inception in 1976, her organization had devoted particular attention to the right of peoples to self-determination, a right that did not necessarily imply the creation of new States and new frontiers but that entitled people to participate in decision-making concerning their own destiny.

80. Her organization had, on many occasions, sought to draw the Commission's attention to the plight of the Kurdish people, a population of 35 million deprived of the right to self-determination and divided territorially among five different States and oppressed by those States, four of which had never afforded it any representation.

81. In Turkey, parliamentarians elected by the Kurds had been assassinated, imprisoned or forced into exile. Three political parties known for their links to the Kurdish people had been banned and, in January 1995, six Members of Parliament had been sentenced to prison terms ranging from 7 to 15 years. All proposals by the Kurdish movement for a cease-fire and a political solution within existing Turkish borders had been rejected by the authorities.

82. Since 1990, the destruction of Kurdish villages had been part of official Turkish policy. It was a form of legalized genocide, leading to a massive enforced exodus of those who refused to take up arms against their own people. As a result of the emptying of Kurdish villages, towns and cities such as Diyarbakir and Kulp had become overpopulated.

83. The Turkish State's military policy, including an annual defence budget of US$ 7,000 million, had had a disastrous effect on its economy. Weapons were provided by the North Atlantic Treaty Organization (NATO), and financed by loans from Western countries.

84. The Kurdish people wanted to be free to use its resources for its own economic and social development and was certainly mature enough to decide on its own future. The path to peace led through recognition of the rights of that people, particularly its right to self-determination.

85. Turning to the question of Western Sahara, she said that the Saharan people had also been denied the right to self-determination, a right recognized on many occasions, particularly by Security Council resolution 725(91), which was accompanied by a settlement plan for Western Sahara laying down the conditions for the holding of a referendum on self-determination in January 1992. That referendum had not yet taken place and continued to be jeopardized by intimidation and obstruction of potential voters and possible fraud in the identification process.

86. The United Nations Mission for the Referendum in Western Sahara (MINURSO), which was responsible for organizing and monitoring the referendum, had lost control of one of the most important stages of the process by

delegating the crucial operation of registration and identification of potential voters to the parties concerned. Morocco had stepped in and assumed full control of the identification process.

87. A large number of Saharans included in the 1974 census had failed to present themselves to the Identification Commission because they had not been duly informed, the Moroccan authorities having prevented MINURSO from using the Moroccan media to publicize the exercise. Saharans had complained that, although their names appeared on the identification list, they had been refused access to Moroccan means of transport. They were unable to make direct contact with MINURSO but were assembled by the Moroccans at a designated centre and conveyed from there to the MINURSO identification centre, a procedure conducive to intimidation. The Identification Commission issued a receipt to each potential voter that had to be exchanged for a voting card, but a number of Saharans had been deprived of their receipts by Moroccans in the vehicles conveying them to El Aaiun from the identification centres. The voting cards issued against such receipts would therefore be invalid.

88. A high-ranking MINURSO official mentioned by a previous speaker had stated that all such irregularities had been officially reported to MINURSO but had never been communicated to United Nations Headquarters.

89. The question arose, therefore, whether the United Nations had the necessary means and authority to guarantee the requisite conditions of freedom and security for the conduct of a referendum that was to decide the future of a people and thus recover the credibility that it had lost in the eyes of the international community.

The meeting rose at 5.50 p.m.